IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.11.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

W.A. NO. 2237 OF 2002

The Superintending Engineer
Chidambaranar Electricity
Distribution Circle, T.N.E.B.
Tuticorin. .. Appellant

- Vs -

1. The Presiding Officer
Labour Court, Tirunelveli.

2. P.Chelliah .. Respondents

Writ Appeal filed against the order dated 16.04.2001 passed by learned single Judge in W.P. No.3240 of 1994, praying to issue a writ of certiorari calling for the records of the first respondent in ID.No.521/90 and quash its order made therein dated 21.10.92.

For Appellant : Ms. C.A.Sharmila for Mr.M.Vaidyanathan
For Respondents : Mr. S.Ayyathurai for R-2

JUDGMENT

S.J.MUKHOPADHAYA, J.

The writ petition was preferred by the Superintending Engineer, Chidambaranar Electricity Distribution Circle, Tuticorin, (hereinafter referred to as 'Electricity Board'), against the award dated 21st Oct., 1992, passed by learned Presiding Officer, Labour Court, Tirunelveli, in I.D. No.521/90. By the said order, learned Presiding Officer, Labour Court, Tirunelveli held that the punishment of removal from service is excessive and disproportionate to the misconduct alleged and, thereby, rendered the order of removal illegal without awarding any punishment, as the workman had attained the age of superannuation in the meantime. The management of the electricity board has been directed to pay the terminal benefits, including pension, etc. Learned single Judge upheld the award giving rise to this appeal.

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2. The relevant facts for determination of claim are mentioned hereunder :-

The 2nd respondent – workman, who was working under the appellant, was proceeded departmentally in December, 1988. Inspite of service of notice, he did not choose to reply nor appeared in the proceeding. In the circumstances, the enquiry officer had to conduct ex-parte enquiry. On the basis of the evidence on record, he held the workman guilty of the charges. On 16th Nov., 1988, a show cause notice was issued on the workman as to why he should not be removed from service. This time also, the workman did not choose to submit any reply, whereinafter, the disciplinary authority, agreeing with the finding of the enquiry officer, removed the workman from service on 1st Feb., 1989. The order was served on the workman on 23rd Feb., 1989, against which he preferred appeal before the Chief engineer, Electricity Board on 3rd March, 1989 explaining his family circumstances and suffering for not attending the enquiry. The appeal having been dismissed, he forwarded a mercy petition to the Chairman of the Electricity Board on 18th Oct., 1989,which having been rejected, he raised an industrial dispute u/s 2 (A) (2) of the Industrial Disputes Act, 1947.

The application was registered as I.D. No.521/90. The appellant appeared and contested the matter. Learned Presiding Officer, by impugned award dated 29th Oct., 1992, while upheld the enquiry proceeding and report submitted by the enquiry officer, held that the punishment of removal from service was disproportionate to the gravity of charges. The relief was granted to the workman, except back wages for the intervening period.

3. The only question requires to be determined in this appeal is whether the punishment of removal from service as was imposed by appellant was proportionate to the gravity of the charges.

4. While according to the appellant, punishment of removal from service was proportionate to the gravity of the charges and inflicting any lesser punishment will be disproportionate; on the other hand, according to the counsel for the workman, punishment of removal from service is disproportionate to the gravity of the charges.

5. We have heard the learned counsel for the parties, perused the award, records, judgment passed by learned single Judge and also noticed the submissions as made by counsel for the parties.

6. For determination of the issue, it is desirable to quote the charges as was levelled against the workman vide charge memo No.AEE/Rural/F.Doc Con./J.A./D.No.452/88 dated 20th June, 1988, English version of which is quoted hereunder :-

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"1. Thiru P.Chelliah, then wireman, Velayuthapuram, absented from duty for 7 days, in February1, 8, 9, 23, 25, 26 and 27.2.1986 without any previous permission. Again he has not attended duty from 7.4.1988 to 28.6.1988, i.e., the date of issue of charge memo. The above acts of Thiru P.Chelliah, wireman constituted misconduct as per Boards Standing Order 30 (I) (VIII) (X) and 30 (XXVI) of Workmen other than those engaged in clerical work.

2. As per the Assistant Engineer/Distribution/Kalugumalai Memo, Thiru P.Chelliah, wireman, should attend the Distribution office every Monday. But he has not taken any care and had not attended the Distribution office on 28.12.1987 and 4.1.1988. This act of Thiru P.Chelliah constitutes misconduct as per Boards Standing order 30 (1) and (X) of Workmen other than those engaged in clerical work.

3. Thiru P.Chelliah, wireman has given direct connection, i.e., without Meter, to service connection No.56 at Karadikulam. This act of Thiru P.Chelliah, wireman constitutes misconduct of Workmen other than those engaged in clerical work.

4. While the inspection of the Assistant Engineer on 20.04.1988 it is found out that Thiru P.Chelliah, wireman has dismantled the meter in service connection No.192, Velayuthapuram without any approval of the Assistant Engineer and the meter has also not been handed over to the office. This act of Thiru P.Chelliah, wireman, constitutes misconduct as per Standing order 30 (1) and (X) of the Workmen, other than those engaged in clerical work.

5. Thiru P.Chelliah, wireman, has received service connection meters on 8.3.1988 moving. But he has not given any report regarding effecting service connections to the Assistant Engineer, Kalugumalai upto the date of receipt of the charge memo. This act of Thiru P.Chelliah, wireman constitutes misconduct as per Standing order 30 (1) and (X) of the Workmen, other than those engaged in clerical work."

From the charge memo it will be evident that charge No.1 and 2 relate to unauthorised absence from duty, which constitutes misconduct under the Board's Standing Order. Charge No.3 relates to grant of direct connection to one of the consumer without permission and without meter. Charge No.4 relates to grant of direct connection to another consumer by dismantling the meter without any approval of the superior officers. Charge No.5 relates to non-submission of report regarding effecting service connection inspite of receipt of service connection meters.

7. From the award it will be evident that learned Presiding Officer, while discussing the gravity of charges, at paragraph-5, has noticed only the question of unauthorised absence from duty. No discussion has been made with regard to more serious charges like grant of direction connection to consumers without any approval from the higher authority or

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for changing the meter and giving direct connection to another consumer without any approval from the higher authority. Without discussing such gravity of charges as shown, particularly charge Nos. 3, 4 and 5, merely on the basis of the lesser charges made under charge Nos. 1 and 2, the Presiding Officer held that the punishment is disproportionate. Learned single Judge has also failed to notice the aforesaid fact while dismissing the writ petition.

8. From the award it will be evident that the Presiding Officer noticed that the workman also absented earlier in the year 1981 when punishment of stoppage of two increments was imposed. He was also suspended subsequently for similar charge on 1st May, 1984.

9. A case relating to unauthorised absence from duty fell for consideration before the Supreme Court in North Eastern Karnataka R.T. Corporation - Vs - Ashappa & Anr. reported in 2006 (2) SC Service Law Judgments 141. In the said case, a conductor of a bus remained absent from duty unauthorisedly for a large period for which a departmental proceeding was initiated. Opportunity was given to resume duties, but he had not reported. Leave records suggested that earlier also he remained absent unauthorisedly from duty on several occasions. In the said case, Supreme Court held that in the circumstances, unauthorised absence from duty of public utility service cannot be taken lightly, which amounts to grave misconduct.

10. So far as the quantum of penalty is concerned, as pointed out, the Presiding Officer, Labour Court, merely held it higher on the basis of charge Nos.1 and 2, without discussing the effect of charge Nos.3, 4 and 5, which were much grave in nature and for which the workman was held to be guilty. Though departmental enquiry was upheld by Labour Court, as also by learned single Judge, but while giving finding with regard to the quantum of punishment, it was not deliberated as to what should be the proportionate punishment, if removal from service was disproportionate.

11. The question of quantum of punishment fell for consideration before Supreme Court in Regional Manager, UPSRTC, Etawah & Ors. - Vs - Hoti Lal & Anr. reported in 2003 (2) All India Services Law Journal 56. In the said case, the workman was found guilty of non-issuing tickets to passengers and not collecting correct fare. He was dismissed from service. In the said case, the High Court, though found that there was no flaw in the proceeding, yet reduced the penalty. While dealing with the scope of interference in such case, the Supreme Court observed as follows :-

> "10. It needs to be emphasised that the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment does not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional causes in the indicated circumstances. Unfortunately, in the present case, the quoted extra acts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why

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the punishment was considered disproportionate. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. See alexander Machinery Dudley Ltd. v. Crabtree, 1974 LCR 120. A mere statement that it is disproportionate would not suffice. A party appearing before a Court, as to what it is that the Court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be promote to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable. Judged in that background, conclusions of the division Bench of the High Court do not appear to be proper. We set aside the same and restore order of learned single Judge upholding order of dismissal."

12. Learned counsel appearing on behalf of the workman submitted that the workman had attained the age of superannuation and thus no interference is called for; the Labour Court had already disallowed back wages. Request was made to take a lenient view in the facts and circumstances of the case.

13. As stated above, it will be evident that the workman was performing a public duty. He was wireman, who was to give electric connection. The electricity board generates its revenue only from electrical connection, which is given to its consumers. It can be well imagined if such connections are given directly without any meter and that too, without any order of the superior authority. It has also not been made clear by the workman as to who asked him to give direct connection or to replace the meter. It is not the case of the workman that any authority asked him to replace such meter, or to give direct connection to another consumer. This type of attitude of a wireman in suo motu taking up the matter to give direct connection to one or other consumer cannot be taken casually, as it not only affects the revenue of the electricity board, but also the confidence of management on such workman. If the management loses its confidence on such workman, for such gravity of charges, it is not justified to take any lenient view for awarding lesser punishment, than the punishment to which a person is actually entitled to.

According to us, for the charges, particularly charge Nos.3, 4 and 5, any punishment less than removal from service will be disproportionate and, thereby, removal from service cannot be held to be harsh, it being proportionate to the gravity of the charges.

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14. We, accordingly, set aside the award dated 21st Oct., 1992, passed by Presiding Officer, Labour Court, Tirunelveli, as also the order dated 16th April, 2001, passed by learned single Judge. The writ petition as was preferred by workman is dismissed. However, if any amount has been paid to the workman in view of the interim order passed by this Court, the authority will not recover the same. The writ appeal is allowed with the aforesaid observation. There shall be no order as to costs.

GLN

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Presiding Officer
   Labour Court
   Tirunelveli.

2. The Superintending Engineer
   Chidambaranar Electricity
   Distribution Circle, T.N.E.B.
   Tuticorin.

+1 cc to Mr.S.Ayyathurai, Advocate Sr.No.67755.

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